

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KIMONTI GIBSON,

Defendant and Appellant.

B215659

(Los Angeles County
Super. Ct. No. NA079732)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Tomson T. Ong, Judge. Affirmed.

Donald H. Glaser, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Kimonti Gibson¹ appeals his conviction of second degree robbery. We affirm.

BACKGROUND

A one-count information charged Gibson with second degree robbery (Pen. Code, § 211) and alleged that he had inflicted great bodily injury in the commission of the offense. (Pen. Code, § 12022.7, subd. (a).) The information further alleged that Gibson had suffered two drug related convictions for which he had served prison terms. (Pen. Code, § 667.5, subd. (b).)

The court granted Gibson's request to represent himself. Shortly before trial, Gibson moved in limine to suppress evidence of the victim's field showup identification, for a live lineup, and to suppress physical evidence that police found during a patdown search. The trial court denied the motions, finding that the officers had probable cause to detain him and thus to conduct a patdown search for weapons, and that the field showup identification was not impermissibly suggestive.

Gibson continued to represent himself at the jury trial of the charges and allegations of prior convictions.

Prosecution Evidence

On September 21, 2008, Chris Reyes was on his way home from work. He left the Long Beach Metro Blue Line Station between 10:30 and 11:00 p.m. and began walking home. Near the intersection of Pacific Coast Highway and Locust Avenue he noticed two men following him from about six feet behind. Reyes looked at the men for approximately 30 seconds and then started walking faster. As he kept walking, the taller man approached Reyes on his right and the shorter one approached Reyes on his left. The taller man then punched Reyes in the head which caused him to black out.

¹ Defendant's last name appears variously throughout the superior court record as either "Gibson" or "Gipson." Also, in his filings, the defendant uses a first name of "Kimonii" rather than "Kimonti." For purposes of this opinion, we use the name Kimonti Gibson which appears in the reporter's transcript as well as on the abstract of judgment.

After Reyes revived he checked for missing items but found that neither his cell phone nor his backpack was missing. He walked the remaining four blocks to his home. Shortly after he arrived home, a police officer knocked at his door and asked whether his California identification card was missing and showed him a California identification card with Reyes's name, address, and photograph. Reyes told the officer that he had just been robbed by two Black males wearing dark clothing and that he had lost his identification card and bus pass in the robbery.

The officer drove Reyes to participate in a field showup a few blocks away. Reyes immediately identified one of the men as the shorter man who had approached him on his left side. After a few minutes, Reyes also identified Gibson as the taller man who stood on his right side and punched him.

On September 21, 2008, Rolando Hernandez was driving home at approximately 11:00 p.m. when he observed Reyes being assaulted by two men. He immediately called 911 and described the assailants as two Black males dressed in black clothing. One of the men held Reyes as the other one rifled through Reyes's pockets, after which the two ran off toward Locust Avenue as Reyes slumped to the ground. Hernandez followed the two men in his truck until officers joined the pursuit.

Police received Hernandez's 911 call at 10:55 p.m., officers were dispatched at 10:56 p.m., and less than four minutes later officers saw Gibson and his companion walking quickly on Locust Avenue. The two men, Black males dressed in black, matched Hernandez's description of the men who assaulted Reyes. The men had sweaty foreheads and were breathing heavily. The officers detained them for questioning. Gibson, the taller of the two men, identified himself as "Mark Brown." He consented to a patdown search. The search revealed Reyes's California identification card in Gibson's pocket. Gibson could not explain his possession of Reyes's identification card.

The officers could not identify Gibson as "Mark Brown" through their vehicle computer system and attempted to confirm his identity through tattoos instead. As

Gibson was removing the tank top he wore underneath his black T-shirt, a five-inch long half scissor fell to the ground.

Gibson and his companion were detained in a police vehicle until Reyes arrived for a field showup. When Reyes identified Gibson as one of the robbers, the officers arrested Gibson, transported him to jail, and booked him under the name “Mark Brown.” When booked Gibson reported that he was six feet, two inches tall. When being fingerprinted Gibson admitted that he was not “Mark Brown” and provided his true name.

A paralegal employed by the Los Angeles County District Attorney’s office testified to the contents and significance of Gibson’s “prison packet” (Pen. Code, § 969b) consisting of his photographs, fingerprint exemplars, certified copies of abstracts of judgments of conviction, and certified documents from the California Department of Corrections showing that he had suffered two drug related offenses for which he had served separate prison terms.

Defense Evidence

Gibson testified on his own behalf. His defense was, in essence, misidentification. He testified that he was not the robber, had no interest in robbing individuals, and if he was going to commit a robbery, it would be a bank robbery. Gibson explained that he was a drug dealer, made money dealing drugs, and had no need to rob people for their identification. He admitted two felony convictions for drug related offenses and that he had served prison sentences for each conviction. Gibson also admitted that he was on parole when the officers detained him. As Gibson explained it, he gave the false name of “Mark Brown” to the police because if he “told him my real name I knew I was going to jail automatically because you cannot come in contact with police officers if you’re on parole.”

Jury’s Verdict

The jury convicted Gibson of second degree robbery and found true the allegations that Gibson had suffered two felony convictions for which he had served prison terms.

The jury, however, found not true the allegation that Gibson had inflicted great bodily injury on Reyes. The court sentenced Gibson to the high term of five years for the robbery and imposed an additional one year for each of the prior convictions, for a total sentence of seven years in state prison.

DISCUSSION

Gibson filed a timely notice of appeal and we appointed counsel to represent him. After an examination of the record, counsel filed an opening brief in which counsel raised no issues and asked this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On August 4, 2009, we advised Gibson that he had 30 days within which to personally submit any contentions or issues he wished us to consider. We have received no response to date.

We have examined the entire record and are satisfied that Gibson's counsel has fully complied with the responsibilities of counsel and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 112-113, 119, 124.)

DISPOSITION

The judgment is affirmed.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.